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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/596,479	06/19/2000	Jean-Christophe Audonnet	454313-2200.1	6603

20999 7590 11/13/2003

FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

EXAMINER

MOSHER, MARY

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 11/13/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/596,479

Applicant(s)

AUDONNET ET AL.

Examiner

Mary E. Mosher, Ph.D.

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED _____ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 15 April 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____


Claim(s) rejected: 17-28 and 38-49.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): 103 rejections over Haanes v/o Cates and Haanes v/o Barbour are withdrawn in view of claim amendments .

Continuation of 5. does NOT place the application in condition for allowance because: 103 rejection over Haanes v/o Paoletti is maintained. Applicant argues that Esposito, Tartaglia, Gilbert, Wardley, all teach differences between herpesviruses and poxviruses as vectors ; Tartaglia teaches away from herpesviruses because of oncogenic potential, and the other publications show differences in immune responses between herpesvirus vectors and poxvirus vectors. However, cautionary teachings in Tartaglia are not sufficiently strong to outweigh the explicit teachings in Haanes; the other publications teach that the immune response is superior when comparing a herpesvirus vector to a poxvirus vector, and support the examiner's position. Xuan is cited as evidence of an unexpected result, that the instant vaccine shows superior results over commercial inactivated vaccine. It is not clear that this result is unexpected; live recombinant vaccines are commonly thought to induce good immune responses because of the in vivo replication of the virus and the endogenous expression of the antigen coding sequences, and Xuan does not compare the claimed vaccine to another live recombinant vaccine. Furthermore, the allegedly unexpected result is not commensurate in scope with the methods of claims 43-49, since the showing is limited to intranasal vaccination.


MARY E. MOSHER
PRIMARY EXAMINER
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